RESTRICTIONS AND RESTRICTIVE AGREEMENTS AS TO THE USE OF PROPERTY — WHERE THE COVENANTEE HAS NO CORPOREAL INTEREST IN ADJOINING LAND. — The predecessor in title of the defendant covenanted with the London County Council that, in consideration of the latter's sanctioning the laying out of a street across his property, he would not build at the end of the proposed street, where the Council intended to continue the street at a later time. The Council sought to enforce this covenant against the defendant, the present owner, who took the land with notice. *Held*, that the covenant cannot be enforced. *London County Council* v. *Allen*, [1914] 3 K. B. 642.

See page 201 of this issue of the REVIEW for a discussion of the nature and proper limits of the doctrine of equitable servitudes.

SALES — IMPLIED WARRANTY — EXCLUSION BY EXPRESS WARRANTY. — The defendant, a canner, contracted to sell to the plaintiff, a jobber of bakers' supplies, a quantity of canned apples guaranteed for six months against "swells," caused by gas from the souring of the fruit. After delivery, the apples developed a strong flavor of gasoline and rubber, so that the plaintiff's customers refused to purchase them. He now sues the defendant on an implied warranty of fitness and merchantability. *Held*, that the plaintiff may recover. *Wolverine Spice Co.* v. *Fallas*, 148 N. W. 701 (Mich.).

Ordinarily a warranty of merchantability and fitness for the intended purpose would be implied on a sale of unspecified goods such as that in the principal case. *Hood* v. *Bloch Bros.*, 29 W. Va. 244, 11 S. E. 910. It is sometimes said, however, that this implication is necessarily excluded by an express warranty in the contract. See *Turl's Sons* v. *Williams, etc. Co.*, 136 App. Div. 710, 712; 121 N. Y. Supp. 478, 480. In certain cases, of course, an express warranty clearly shows an intention to exclude any implied agreements, as when the seller expressly warrants only certain qualities, or when he agrees simply that the product shall conform to specifications furnished by the buyer. *Dowagiac Mfg. Co.* v. *Mahon*, 13 N. D. 257, 101 N. W. 903; *Gill & Co.* v. *National Gaslight Co.*, 172 Mich. 295, 137 N. W. 690. The same intention is apparent when the express warranty is as broad as that sought to be implied, but is unavailable, because the buyer has not performed a condition precedent. *Wasatch Canning Co.* v. *Morgan Canning Co.*, 32 Utah 229, 89 Pac. 1089. But it seems clear that a simple warranty of quality, not in any respect inconsistent with the implication, does not exclude an implied warranty of fitness and merchantability, for warranties are usually expressed in the contract to protect the buyer, not to limit the liability of the seller. *Cook* v. *Darling*, 160 Mich. 475, 125 N. W. 411; *Boulware* v. *Victor Auto Mfg. Co.*, 152 Mo. App. 524, 134 S. W. 7. See UNIFORM SALES ACT, § 15 (6).

SPECIFIC PERFORMANCE — DEFENSES — CLEAN HANDS: APPLICATION OF THE MAXIM TO BASEBALL CONTRACTS. — The defendant, a baseball player of exceptional ability, was induced by the plaintiffs to sign a contract to play for them, although they knew that he was obliged by the reserve clause of his contract with the Philadelphia Club to offer his services for the season to that club. The Philadelphia Club had the right to terminate this contract on ten days' notice to the defendant. The plaintiffs seek an injunction to restrain the defendant from playing for the Philadelphia Club. *Held*, that the injunction will be refused. *Weegham* v. *Killifer*, 215 Fed. 168 (Dist. Ct., W. D., Mich.); affirmed, 215 Fed. 289 (C. C. A., 6th Circ.).

The defendant here was bound by a contract similar to the one in the previous case to play baseball for the plaintiff during the season. The contract was the one prescribed by the National Commission under the National Agreement, which controls forty leagues and substantially all professional baseball players in the country. The defendant broke this contract and signed another with

the Buffalo Federal League Club. The plaintiff seeks an injunction to restrain the defendant from playing for any other club during the period of their contract. *Held*, that the plaintiff is not entitled to the relief sought. *American League Baseball Club of Chicago* v. *Chase*, 149 N. Y. Supp. 6 (Sup. Ct.).

Both cases illustrate the application of the maxim that he who comes into equity must come with clean hands. In the first case, if the prior contract were enforceable, inducement of a breach would be clearly a legal wrong. *Lumley* v. *Gye*, 2 E. & B. 216, 22 L. J. Q. B. 463; *Wanderers Hockey Club* v. *Johnson*, 25 West. L. R. 434 (Brit. Col.). The courts have held, however, that the reserve clause is merely an agreement to make a contract if the parties can agree, and is not enforceable at law or in equity. *Metropolitan Exhibition Co.* v. *Ward*, 24 Abb. N. C. 393, 9 N. Y. Supp. 779. But the plaintiff's conduct in inducing a breach of the obligation is still inequitable enough to warrant a denial of injunctive relief. *Cf. Keane* v. *Boycott*, 2 H. Bl. 511. The second case refuses relief on the double ground of the lack of mutuality of remedy arising from the club's option to terminate and the inequitableness of the plaintiff's conduct in striving to obtain a monopoly of the baseball business. On the point of mutuality, the court follows the weight of authority, although what appears to be a better view would enjoin a breach. *Philadelphia Ball Co.* v. *Lajoie*, 202 Pa. 210, 51 Atl. 973. See Ames, Mutuality in Specific Performance, 3 COL. L. REV. 1, 11. The denial of equitable relief because of the plaintiff's part in a monopolistic combination rests upon the substantially absolute control exercised by the association of baseball clubs operating under the National Agreement over the transfer and exchange of professional players. As the court says, such a combination is clearly not monopoly within the Sherman Anti-Trust Law, for it does not involve control of interstate commerce. See *Metropolitan Opera Co.* v. *Hammerstein*, 147 N. Y. Supp. 532, 535 (Sup. Ct.). The conclusion that it is nevertheless an illegal monopoly at common law is more doubtful, for there was no evidence of unlawful or oppressive measures or that the combination was more than a reasonably necessary means of regulating professional baseball. See EDDY, COMBINATIONS, §§ 305, 559. But if the arrangement is to be regarded as monopolistic because of its undue interference with the individual's freedom of contract, it is clear that equity will not aid it. *O'Brien* v. *Musical Mutual Protective Union*, 64 N. J. Eq. 525, 54 Atl. 150.

TAXATION — WHERE PROPERTY MAY BE TAXED — TAXATION OF FOREIGN CORPORATIONS ON CREDITS IN HANDS OF LOCAL AGENT. — A Tennessee corporation had an office in Alabama. By statute, Alabama levied a tax on the solvent credits payable in Alabama arising from the corporation's local business there. *Held*, that the tax is valid. *State* v. *Tennessee Coal, Iron, & R. Co.*, 66 So. 178 (Ala.).

A corporation has its domicile only in the State in which it is incorporated. *Bergner & Engel Brewing Co.* v. *Dreyfus*, 172 Mass. 154, 51 N. E. 531; *Chafee* v. *Fourth National Bank*, 71 Me. 514. Accordingly, it must be on some basis other than domicile that a state in which a foreign corporation maintains a branch office is able to tax the corporation for credits arising from the local business. And except for that fictional situs at the obligee's domicile, a chose in action as such can have no situs. See 27 HARV. L. REV. 107, 113; 28 *ibid.* 104. From the business point of view, however, such credits form part of the stock in trade of the local office, and are taxable accordingly as property within the jurisdiction. *Metropolitan Life Ins. Co.* v. *New Orleans*, 205 U. S. 545; *Hubbard* v. *Brush*, 61 Oh. St. 252, 55 N. E. 829. But the cases properly insist that the branch office be more than a mere collection agent, and will permit a tax only on the credits that are really part of the local office's investment. *Reat* v. *People*, 201 Ill. 469, 66 N. E. 242; *Myers* v. *Seaberger*, 45 Oh. St. 232, 12